APPENDIX A

Motion to Dismiss Complaint

IN THE

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

FOURTH DIVISION

4-65, Civil 285

MIDDLEWEST MOTOR FREIGHT BUREAU *et al.*,

Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,

Defendants,

and

NATIONAL SMALL SHIPMENTS TRAFFIC CONFERENCE, *et al.*,

Intervenors.

To the Court Above Named:

Plaintiffs respectfully move the court above named for an order dismissing the complaint without prejudice on the grounds that:

1. The issues raised in the complaint have now been rendered moot;

2. It is immaterial at the present time whether the Commission order under attack in these proceedings is found to have been valid or invalid;

3. Dissolution of the temporary restraining order herein, and the denial of further injunctive relief required plaintiffs to cancel those rates which were the subject matter of the Commission's order under attack;

4. Plaintiffs, thereafter, pursued the remedy suggested by this court in its findings of fact VII(b) in filing and pursuing before the Interstate Commerce Commission new and substituted increased rates, which rates, initially established on November 16, 1965, produced greater revenues than did the rates which plaintiffs sought to protect through the complaint action. The rates were further increased on December 19, 1966;

5. No justiciable matters remain at issue between plaintiffs and defendants;

6. Any justiciable issues raised by the complaint and the answer by intervenors have been resolved through subsequent administrative action;

7. Some, but not all, of the intervenors sought and were denied reparations for the alleged excess charges collected during the period of the temporary restraining order in subsequent administrative proceedings;

8. No legal issues remain for determination and disposition by this court. The foregoing motion is brought pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure and is based upon all the files, records, and

proceedings herein and upon the affidavit of J. D. Lawson, together with exhibits appended thereto, which is made a part hereof.

HAROLD C. EVARTS
Attorney for Plaintiffs
1200 First National Bank Building
Minneapolis, Minnesota 55402

Of Counsel:

GEORGE D. MICHALSON
Middlewest Motor
Freight Bureau
P. O. Drawer 647
Kansas City, Missouri 64141

Of Counsel:

BEST, FLANAGAN, LEWIS,
SIMONET & BELLOWS
1200 First National Bank Building
Minneapolis, Minnesota 55402

Of Counsel:

ROLAND RICE
RICE, CARPENTER AND CARRAWAY
1111 E Street Northwest
Washington, D. C. 20004